

FRANK J. UXA, JR.*
ROBERT D. BUYAN**
DONALD E. STOUT
KENTON R. MULLINS
JO ANNE M. YBABEN
KATEN S. VAKIL
LINDA ALLYSON FOX
KYLE D. YESLAND, Ph.D.
GREG S. HOLLRIEGEL, Ph.D.**
LOUISE S. REIM**

LAW OFFICES OF
STOUT, UXA, BUYAN & MULLINS, LLP

4 VENTURE, SUITE 300
IRVINE, CALIFORNIA 92618
(949) 450-1750
FACSIMILE: (949) 450-1764

PATENTS, TRADEMARKS,
COPYRIGHTS, AND RELATED
INTELLECTUAL PROPERTY
MATTERS

GORDON L. PETERSON (Retired)

*PROFESSIONAL CORPORATION
**REGISTERED PATENT AGENT

OUR FILE NO.
TRNSV-001C

FACSIMILE COVER SHEET

Date: October 25, 2002

To: **Commissioner for Patents
Washington, D.C.**

Facsimile: 703-305-3579

Re: U.S. Patent Application No. 09/708,923
Applicant: Joshua Makower, et al.
Title: Methods and Apparatus for Bypassing Arterial Obstructions and/or Performing
Other Transvascular Procedures

From: Robert D. Buyan

Total Number of Pages: 3 (including this form). Please notify us immediately if you have not received all pages.

Message:

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence for Serial No. 09/708,923 is being facsimile transmitted to the Commissioner for Patents at (703) 305-3579 on October 25, 2002.

Name of person sending facsimile: Francine Sanders, Assistant to Robert D. Buyan

Signature: 

PRIVACY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address. Thank you.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Joshua Makower)	
)	Art Unit: 3738
Application No. 09/708,923)	
)	Examiner: Isabella, David J.
Filed: November 8, 2000)	
)	
For: Methods and Apparatus for)	
Bypassing Arterial Obstructions and/or)	
Performing Other Transvascular)	
<u>Procedures</u>)	

Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO OFFICE ACTION DATED SEPTEMBER 25, 2002

Dear sir:

Applicant hereby responds to the restriction requirement office action dated September 25, 2002.

The Office Action indicates incorrectly that Claims 1-92 are pending in the case. In actuality, the continuation transmittal included a preliminary amendment voluntarily canceling Claims 60-92 and the filing fee was paid on the basis of Claims 1-59 only. Thus Claims 1-59 are currently pending.

Applicant provisionally elects to prosecute the claims of Group I (Claims 1-19). Applicant respectfully traverses the restriction requirement insofar as Groups I and II have been deemed to be subject to restriction from one another. The applicable regulations require that two (2) criteria be met in order for a restriction requirement of this type to be proper. Those criteria are as follows:

(A) The inventions must be independent (see MPEP §§ 802.01, §§ 806.04, §§ 808.01) or distinct as claimed (see MPEP 806.05 - §§ 806.05(i)); and

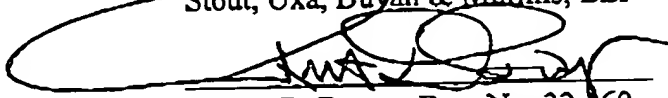
Applicant: Joshua Makower
Serial No.: 09/708,923
Page 2 of 2

examiner (see MPEP §§ 803.02, §§ 806.04(a) - §§ 806.04(i), §§ 808.01(a), and §§ 808.02).

Applicant believes that the claims of Group II (Claims 20-31) are sufficiently similar to certain of the dependent claims within Group I that the Examiner could examine Groups I and II concurrently without "serious burden." For example, dependent claims 17-19 specifically recite the use of a passageway forming catheter to carry out the method of Claim 1 while independent Claim 20 recites a method for coronary revascularization using a passageway-forming catheter. Given the fact that the Examiner will be searching and examining dependent Claims 17-19 as part of Group I, the additional searching and examining of Group II (Claims 20-31) would not greatly increase the burden on the Examiner. Accordingly, Applicant respectfully requests that Group II be combined with Group I and that Claims 1-31 be examined.

No fee is seen to be due in connection with this response/amendment. However, in the event that any fee is properly deemed to be due, the Commissioner is hereby authorized to charge such fee to Deposit Account No.50-0878.

Respectfully submitted,
Stout, Uxa, Buyan & Mullins, LLP



Robert D. Buyan, Reg. No. 32,460

Date: October 25, 2002

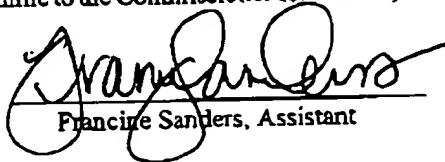
4 Venture, Suite 300
Irvine, CA 92618
Telephone:(949) 450-1750; Facsimile: (949) 450-1764
email: rbuyan@patlawyers.com

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted by facsimile to the Commissioner for Patents, Washington, DC 20231 at (703) 305-3579 on October 25, 2002.

Dated: October 25, 2002

By:



Francine Sanders, Assistant